

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

SECURITIES INVESTOR PROTECTION CORPORATION, Plaintiff-Applicant, v. BERNARD L. MADOFF INVESTMENT SECURITIES LLC, Defendant.	SIPA LIQUIDATION No. 08-01789 (SMB) (Substantively Consolidated)
In re: BERNARD L. MADOFF, Debtor,	
IRVING H. PICARD, Trustee for the Liquidation of Bernard L. Madoff Investment Securities LLC, Plaintiff, v. LEGACY CAPITAL LTD. and KHRONOS LLC, Defendants.	Adv. Pro. No. 10-05286 (SMB)

**DECLARATION OF RAFAEL MAYER IN OPPOSITION TO
THE TRUSTEE'S MOTION FOR SUMMARY JUDGMENT**

I, Rafael Mayer, declare as follows:

1. I am the Managing Member of Khronos LLC ("Khronos"), which provided accounting and financial services to Legacy Capital Ltd. ("Legacy") during the period relevant to plaintiff's claim. The information set forth below is based upon my personal knowledge and my review of records. The records I reviewed included (a) account statements and trading confirmations provided by Bernard L. Madoff Investment Securities LLC ("BLMIS") to Legacy, with which I am personally familiar as a result of services Khronos performed for Legacy, and (b) third-party document productions that were made in response to subpoenas issued by plaintiff's counsel.

2. Attached hereto as Exhibit 1 is the Legacy account statement received from BLMIS in December 2006, showing that Legacy held securities valued at \$199,197,675.10 as of November 30, 2006 with BLMIS.

3. Below, this declaration describes five examples of what appear to be actual trades executed by BLMIS on behalf of Legacy's account. The examples of actual trades set forth below are not comprehensive. It is my understanding that a comprehensive analysis would demonstrate many additional actual trades by BLMIS for the Legacy account.

2002 Trade for Legacy Executed Through Morgan Stanley

4. Morgan Stanley produced an account statement showing trades executed between Morgan Stanley and BLMIS for the month ending May 31, 2002. Attached hereto as Exhibit 2 is a copy of the relevant portion of the Morgan Stanley account statement for the month ending May 31, 2002.¹

¹ For the Court's convenience, the pertinent portions of the documents attached hereto are outlined in red and blue.

5. The Morgan Stanley account statement indicates that on May 9, 2002, BLMIS purchased 1,000,000 U.S. Treasury bills with a maturity of July 25, 2002, at a price of \$99.6439 per unit for a total purchase price of \$99,643,905.00 (the "May 2002 Trade").

6. According to a trade confirmation sent by BLMIS to Legacy, it appears that on May 20, 2002, BLMIS sold 124,000 of the U.S. Treasury bills from the May 2002 Trade to the Legacy account. Attached hereto as Exhibit 3 is a copy of the May 20, 2002 trade confirmation.

7. The maturity date on the U.S. Treasury bills identified in the Legacy trade confirmation matches the maturity date of the U.S. Treasury bills in the May 2002 Trade, and the price per Treasury bill 11 days later is a few pennies more (\$99.69), for a total trade amount of \$12,361,560.

8. The Legacy account statement for the period ending May 31, 2002, is entirely consistent with the above-described transaction in this lot of U.S. Treasury bills. Attached hereto as Exhibit 4 is a copy of the relevant portion of the Legacy account statement for the period ending May 31, 2002.

9. Approximately two months later, a July 19, 2002 Legacy trade confirmation from BLMIS indicates the sale from the Legacy account of the 124,000 U.S Treasury bills with the July 25, 2002 maturity date for a profit at a unit price of \$99.973. Attached hereto as Exhibit 5 is a copy of the July 19, 2002 trade confirmation.

10. This same sale transaction is also reflected in Legacy's BLMIS account statement for the period ending July 31, 2002. Attached hereto as Exhibit 6 is a copy of the relevant portion of the Legacy account statement for the period ending July 31, 2002.

11. Finally, consistent with all the above, the Morgan Stanley account statement for the month ending July 31, 2002, reflects BLMIS's redemption of the entirety of the original

1,000,000 lot of U.S Treasury bills at their July 25, 2002 maturity date. Attached hereto as Exhibit 7 is a copy of the relevant portion of the Morgan Stanley account statement for the month ending July 31, 2002.

2005 Trade for Legacy Executed Through Morgan Stanley

12. Morgan Stanley produced an account statement showing trades executed between Morgan Stanley and BLMIS for the month ending March 31, 2005. Attached hereto as Exhibit 8 is a copy of the relevant portion of the Morgan Stanley account statement for the month ending March 31, 2005.

13. The Morgan Stanley account statement indicates that on March 18, 2005, BLMIS purchased 500,000 U.S. Treasury bills with a maturity of August 25, 2005, at a price of \$98.7089 per unit for a total purchase price of \$49.3 million; and also purchased 1,000,000 U.S. Treasury bills with a maturity date of September 1, 2005, at a price of 98.6408 per unit for a total purchase price of \$98.6 million (the "March 2005 Trade").

14. According to a trade confirmation sent by BLMIS to Legacy, it appears that on March 18, 2005, BLMIS settled a trade to sell 98,750 of the U.S. Treasury bills from the March 2005 Trade to the Legacy account. Attached hereto as Exhibit 9 is a copy of the Match 18, 2005 trade confirmation.

15. The maturity date of August 25, 2005 on the U.S. Treasury bills identified in the Legacy trade confirmation matches the maturity date of the U.S. Treasury bills in the March 2005 Trade, and the price per Treasury bill is approximately two cents less (\$98.684), for a total trade amount of \$9,745,045.

16. According to a second Legacy trade confirmation, it appears that on March 18, 2005, BLMIS also settled a trade to sell another 98,750 of the U.S. Treasury bills from the

March 2005 Trade to the Legacy account. Attached hereto as Exhibit 10 is a copy of the second March 18, 2005 trade confirmation.

17. The maturity date of September 1, 2005 on the U.S. Treasury bills identified in the Legacy trade confirmation matches the maturity date of the U.S. Treasury bills in the March 2005 Trade, and the price per Treasury bill is also approximately two pennies less (\$98.622), for a total trade amount of \$9,738,922.50.

18. The Legacy account statement for the period ending March 31, 2005, is entirely consistent with the above-described transaction in these two lots of U.S. Treasury bills. Attached hereto as Exhibit 11 is a copy of the relevant portion of the Legacy account statement for the period ending March 31, 2005.

19. Approximately two months later, a May 24, 2005 Legacy trade confirmation from BLMIS indicates the sale from the Legacy account of the 98,750 U.S Treasury bills with the August 25, 2005 maturity date for a profit at a unit price of \$99.251. Attached hereto as Exhibit 12 is a copy of the May 24, 2005 trade confirmation.

20. A second May 24, 2005 Legacy trade confirmation from BLMIS indicates the sale from the Legacy account of the 98,750 U.S Treasury bills with the September 1, 2005 maturity date for a profit at a unit price of \$99.192. Attached hereto as Exhibit 13 is a copy of the September 1, 2005 trade confirmation.

21. These same sale transactions are also reflected in Legacy's BLMIS account statement for the period ending May 31, 2005. Attached hereto as Exhibit 14 is a copy of the relevant portion of the Legacy account statement for the period ending May 31, 2005.

22. Finally, consistent with all the above, the Morgan Stanley account statements for the months ending August 31, 2005 and September 30, 2005, respectively, reflects BLMIS's

redemption of the entirety of the lots of U.S Treasury bills at their respective August 25, 2005 and September 1, 2005 maturity dates. Attached hereto as Exhibit 15 and Exhibit 16, respectively, are copies of the relevant portions of the Morgan Stanley account statements for the months ending August 31, 2005 and September 30, 2005.

2007 Trade for Legacy Executed Through JPMorgan

23. JPMorgan produced an account statement showing trades executed between JPMorgan and BLMIS for the month ending March 31, 2007. Attached hereto as Exhibit 17 is a copy of the relevant portion of the JPMorgan account statement for the month ending March 31, 2007.

24. The JPMorgan account statement indicates that on March 15, 2007, BLMIS purchased several lots of 500,000 U.S. Treasury bills with a maturity of June 21, 2007, at a price of \$98.678 per unit² for a total purchase price of \$49,339,180.56 per lot (the “March 2007 Trade”). The U.S. Treasury bills purchased by BLMIS are further identified by CUSIP No. 912795ZM6.³

25. According to a trade confirmation sent by BLMIS to Legacy, it appears that on March 26, 2007, BLMIS sold 159,500 of the U.S. Treasury bills from the March 2007 Trade to the Legacy account. Attached hereto as Exhibit 18 is a copy of the March 26, 2007 trade confirmation. Both the maturity date and the CUSIP number on the U.S. Treasury bills identified in the Legacy trade confirmation match the maturity date and CUSIP number of the U.S. Treasury bills in the March 2007 Trade.

² The price per Treasury bill is not indicated on the face of the JPMorgan statement, but is derived by dividing the transaction amount by the number of Treasury bills in the transaction.

³ A CUSIP number is a recognized identifier of securities assigned by CUSIP Global Services.

26. According to a second trade confirmation sent by BLMIS to Legacy, it appears that on March 30, 2007, BLMIS sold an additional 1,500 of the U.S. Treasury bills from the March 2007 Trade to the Legacy account. Attached hereto as Exhibit 19 is a copy of the March 30, 2007 trade confirmation. Both the maturity date and the CUSIP number on the U.S. Treasury bills identified in the Legacy trade confirmation match the maturity date and CUSIP number of the U.S. Treasury bills in the March 2007 Trade.

27. The Legacy account statement for the period ending March 31, 2007, is entirely consistent with the above-described transaction in this lot of U.S. Treasury bills. Attached hereto as Exhibit 20 is a copy of the relevant portion of the Legacy account statement for the period ending March 31, 2007.

28. Approximately one month later, an April 25, 2007 Legacy trade confirmation BLMIS indicates the sale from the Legacy account of 161,000 U.S Treasury bills with the June 21, 2007 maturity date and the same CUSIP number for a profit. A copy of the April 25, 2007 trade confirmation is attached as Exhibit 21 hereto.

29. This same sale transaction is also reflected in Legacy's BLMIS account statement for the period ending April 30, 2007. Attached hereto as Exhibit 22 is a copy of the relevant portion of the Legacy account statement for the period ending April 30, 2007.

30. Finally, consistent with all the above, the JPMorgan account statement for the period ending June 29, 2007, reflects BLMIS's redemption of the entirety of the original lot of U.S Treasury bills purchased in the March 2007 Trade at their June 21, 2007 maturity date. A copy of the relevant portion of the JPMorgan account statement for the period ending June 29, 2007, is attached hereto as Exhibit 23. The sale reflected in the JPMorgan account statement ties to the same CUSIP number as the March 2007 Trade.

September 2007 Trade for Legacy Executed Through JPMorgan

31. JPMorgan produced an account statement showing trades executed between JPMorgan and BLMIS for the period from June 1, 2007 through June 29, 2007. A copy of the relevant portion of the JPMorgan account statement for the period ending June 29, 2007, is attached hereto as Exhibit 24.

32. The JPMorgan account statement indicates that on June 21, 2007, BLMIS purchased several lots of U.S. Treasury bills at a price of \$98.845 per unit⁴ for a total purchase price of \$49,422,402.78 per lot (the "June 2007 Trade"). The U.S. Treasury bills purchased by BLMIS are further identified by CUSIP No. 912795A27.

33. According to a trade confirmation sent by BLMIS to Legacy, it appears that on June 21, 2007, BLMIS also sold a portion of the U.S. Treasury bills from the June 2007 Trade to the Legacy account. A copy of the June 21, 2007 trade confirmation is attached hereto as Exhibit 25. The CUSIP number on the U.S. Treasury bills identified in the Legacy trade confirmation match the CUSIP number of the U.S. Treasury bills in the June 2007 Trade.⁵

34. The Legacy account statement for the period ending June 30, 2007, is entirely consistent with the above-described transaction in this lot of U.S. Treasury bills. A copy of the relevant portion of the Legacy account statement for the period ending June 30, 2007 is attached hereto as Exhibit 26.

35. A few months later, a September 14, 2007 Legacy trade confirmation from BLMIS indicates the sale from the Legacy account of these U.S Treasury bills with the same

⁴ The price per Treasury bill is not indicated on the face of the JPMorgan statement, but is derived by dividing the transaction amount by the number of Treasury bills in the transaction.

⁵ For this transaction, the JPMorgan account statement does not indicate the maturity date of the Treasury bills. However, the corresponding Legacy trade confirmation indicates a maturity date of September 20, 2007.

CUSIP number for a profit. A copy of the September 14, 2007 Legacy trade confirmation is attached hereto as Exhibit 27.

36. This same sale transaction is also reflected in Legacy's BLMIS account statement for the period ending September 30, 2007. Attached hereto as Exhibit 28 is a copy of the relevant portion of Legacy's BLMIS account statement for the period ending September 30, 2007.

37. Finally, consistent with all the above, the JPMorgan account statement for the period from September 1, 2007 through September 28, 2007, reflects BLMIS's redemption of the entirety of the original lot of U.S Treasury bills purchased in the June 2007 Trade at their September 20, 2007 maturity date. A copy of the relevant portion of the JPMorgan account statement for the period ending September 28, 2007, is attached hereto as Exhibit 29. The sale reflected in the JPMorgan account statement ties to the same CUSIP number as the June 2007 Trade.

November 2007 Trade for Legacy Executed Through Lehman and JPMorgan

38. Lehman Brothers produced an account statement showing trades executed between Lehman Brothers and BLMIS for the period from November 1, 2007 through November 30, 2007. Attached hereto as Exhibit 30 is a copy of the relevant portion of the Lehman Brothers statement for the period ending November 30, 2007.

39. The Lehman Brothers account statement indicates that on November 7, 2007, BLMIS purchased two lots of U.S. Treasury bills at a price of \$99.115 per unit⁶ for a total

⁶ The price per Treasury bill is not indicated on the face of the Lehman statement, but is derived by dividing the transaction amount by the number of Treasury bills in the transaction.

purchase price of \$49,557,638.89 per lot (the "November 2007 Trade"). The U.S. Treasury bills purchased by BLMIS are further identified by CUSIP No. 912795C66.

40. JPMorgan's account statement for this same period similarly shows the purchase of additional Treasury bills with the same CUSIP number. A copy of the relevant portion of the JPMorgan account statement for the period ending November 30, 2007, is attached hereto as Exhibit 31.

41. According to a trade confirmation sent by BLMIS to Legacy, it appears that on November 8, 2007, BLMIS also sold a portion of the U.S. Treasury bills from the November 2007 Trade to the Legacy account. A copy of the November 8, 2007 trade confirmation is attached hereto as Exhibit 32. The CUSIP number on the U.S. Treasury bills identified in the Legacy trade confirmation match the CUSIP number of the U.S. Treasury bills in the November 2007 Trade.

42. The Legacy account statement for the period ending November 30, 2007, is entirely consistent with the above-described transaction in this lot of U.S. Treasury bills. A copy of the relevant portion of the Legacy account statement for the period ending November 30, 2007 is attached hereto as Exhibit 33.

43. A couple of weeks later, a November 20, 2007 Legacy trade confirmation from BLMIS indicates the sale from the Legacy account of these U.S Treasury bills with the same CUSIP number for a profit. A copy of the November 20, 2007 Legacy trade confirmation is attached hereto as Exhibit 34.

44. This same sale transaction is also reflected in Legacy's BLMIS account statement for the period ending November 30, 2007. Attached hereto as Exhibit 35 is a copy of the

relevant portion of Legacy's BLMIS account statement for the period ending November 30, 2007.

* * *

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed on February 28, 2019

A handwritten signature in black ink, appearing to be 'R. Mayer', written over a horizontal line.

Rafael Mayer

